

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

12 NORTH AMERICAN CAPACITY INSURANCE) 3:10-cv-00157-HDM-RAM
COMPANY, and NORTH AMERICAN)
13 SPECIALTY INSURANCE COMPANY,)
)
14 Plaintiffs,) ORDER
)
15 vs.)
)
16 REYNEN & BARDIS DEVELOPMENT)
(NEVADA) LLC, et al.,)
17)
18 Defendants.)

19 Before the court is defendant Steadfast Insurance Company's
20 ("Steadfast") motion to dismiss for failure to state a claim
21 pursuant to Fed. R. Civ. P. 12(b) (6) (#24). Plaintiffs have filed
22 an opposition (#26), and an errata to the opposition (#27).
23 Steadfast has filed a reply (#28).

24 At a minimum, a complaint should contain "enough facts to
25 state a claim to relief that is plausible on its face." *Bell Atl.*
26 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This plausibility
27 standard demands "more than a sheer possibility that a defendant
28 has acted unlawfully." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949

1 (2009). While the pleading need not contain detailed factual
2 allegations, it is insufficient if it offers only labels and
3 conclusions, a formulaic recitation of the elements of a cause of
4 action, or "naked assertions devoid of further factual
5 enhancement." *Id.* at 1949 (internal punctuation omitted).

6 In considering a motion to dismiss under Rule 12(b)(6), the
7 court must accept as true all material allegations in the complaint
8 as well as all reasonable inferences that may be drawn from such
9 allegations. *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1150 (9th Cir.
10 2000). The allegations of the complaint also must be construed in
11 the light most favorable to the nonmoving party. *Shwarz v. United*
12 *States*, 234 F.3d 428, 435 (9th Cir. 2000). This tenet, however, is
13 "inapplicable to legal conclusions." *Iqbal*, 129 S. Ct. at 1949.
14 "Threadbare recitals of the elements of a cause of action,
15 supported by mere conclusory statements, do not suffice." *Id.*
16 "While legal conclusions can provide the framework of a complaint,
17 they must be supported by factual allegations." *Id.* at 1950.

18 Plaintiffs' complaint asserts that defendant Southwest Vista
19 Homeowner's Association filed a construction defect lawsuit against
20 the "Reyner & Bardis Defendants" (all defendants but Steadfast and
21 Southwest Vista Homeowner's Association), that plaintiffs had
22 issued policies of insurance to various of those defendants
23 requiring plaintiffs to "pay all sums which the insured[s become]
24 legally obligated to pay as damages for bodily injury or property
25 damage to which the coverage applies," and that Steadfast "also
26 issued policies of insurance to one or more of the Reyner & Bardis
27 Defendants under policy numbers HBP 3991347-00, HBP 3991347-01, HBP
28 3991347-02 and HBP 3991347-03 for one year periods beginning

1 February 1, 2004." (Pl. Compl. 3-5). The complaint alleges that
2 the Reynen & Bardis defendants failed to provide timely notice of
3 the claims asserted against them in that action, and that as a
4 result plaintiffs have no duty to defend or indemnify those
5 defendants as otherwise required by the issued policies.
6 Plaintiffs thus seek a "judicial determination of the[ir] rights
7 and obligations . . . under their policies with respect to the
8 underlying construction defect lawsuit." (*Id.* at 7).

9 Plaintiff's complaint fails to provide sufficient factual
10 allegations to state a claim for declaratory relief against
11 Steadfast. It does not allege what type of policies Steadfast
12 issued, what Steadfast's responsibilities are or may be to
13 defendants, nor what claims Steadfast may bring against the
14 plaintiffs. The complaint therefore fails to comply with the
15 requirements set forth in *Bell Atlantic* and *Iqbal* that a complaint
16 contain "enough facts to state a claim to relief that is plausible
17 on its face."

18 Accordingly, Steadfast's motion to dismiss (#24) is **GRANTED**,
19 and plaintiff's claim against it is **DISMISSED WITHOUT PREJUDICE**.
20 Plaintiff is granted leave to file an amended complaint setting
21 forth with greater specificity the grounds for its claim against
22 Steadfast. Any such amended complaint shall be filed no later than
23 June 22, 2010.

24 **IT IS SO ORDERED.**

25 DATED: This 1st day of June, 2010.

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28

UNITED STATES DISTRICT JUDGE